



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



Aranco Oil Company
557 North State Street
Concord, NH 03301
Attn: Mr. Floyd Hayes

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 2000-011**

March 3, 2000

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division"), to Aranco Oil Company pursuant to RSA 125-C:15 and Env-C 601.05. The Division is proposing that fines totaling \$2,800 be imposed against Aranco Oil Company for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. Aranco Oil Company ("Aranco") is a corporation having a mailing address of 557 North State Street, Concord, NH 03301.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 125-C:15,I-b(b) authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C.
2. RSA 125-C:15,I-b(b) establishes the schedule of fines for violations of RSA 125-C.
3. Aranco is the owner and gasoline distributor for the following facilities: Loudon Road Sunoco ("Sunoco facility"), located at 116 Loudon Road, Concord, NH; and South Main Mobil ("Mobil facility"), located at 81 South Main Street, Concord, NH.
4. A two-point stage I vapor recovery system is installed at the Sunoco facility. This stage I system uses a vapor return connection at the tank which is independent of the fill port. Separate connections are made for both the product and vapor recovery hoses.

5. Env-A 1205.14(b) states that "no person shall deliberately or negligently vent any captured vapors to the atmosphere."
6. On July 18, 1998, a DES inspector observed an Aranco employee unloading gasoline product at the Sunoco facility. During the unloading procedure, the DES inspector observed that the Aranco distributor did not have the vapor recovery hose properly connected to the two-point stage I vapor recovery system. In this case it was observed that the vapor recovery piping elbow had been connected but the vapor hose used for diverting the vapors back to the tanker was not connected. Thus, during the tank filling operation gasoline vapors were venting directly into the atmosphere.
7. In accordance with RSA 125-C:2 and RSA 125-C:15,I-b(b), the Division has classified the deliberate or negligent venting of vapors into the atmosphere as a major deviation from a requirement causing moderate potential for harm.
8. A coaxial stage I vapor recovery system is installed at the Mobil facility. This stage I system consists of a tube within a tube. The fill tube, which is submerged in the gasoline storage tank, delivers the product through the inner tube while the vapors from the storage tank are returned via the outside space surrounding the fill tube. A single coupling connects to the coaxial tank connection and converts the coaxial configuration to two separate connections for the gasoline product and vapor recovery hoses.
9. Env-A 1205.12(e) requires coaxial systems to use a separate coaxial coupling with a stage I vapor recovery hose for each tank. The purpose of this requirement is to ensure that each tank using a coaxial system is connected during filling operation in order to use its own coaxial vapor return annulus. Operation in this manner ensures that the vapor return flow pressure drop during filling is minimized and that the vapor is properly recovered.
10. On October 20, 1999, DES inspectors observed that an Aranco employee had connected a coaxial coupling with a stage I vapor recovery hose to one regular tank at the Mobil facility which was being filled with gasoline and a non-coaxial coupling to a second regular tank at the Mobil facility being filled with gasoline. Such operation, which uses only one coaxial vapor line to accommodate vapor return from two tanks during simultaneous filling of each tank violates Env-A 1205.12(e).
11. In accordance with RSA 125-C:2 and RSA 125-C:15,I-b(b), the Division has classified the failure to use a separate coaxial coupling with a stage I vapor recovery hose for each tank as a minor deviation from a requirement causing moderate potential for harm.
12. Env-A 1205.05(f) requires that each tank be equipped with a submerged gasoline fill pipe. The purpose of this requirement is to eliminate splash filling of gasoline so as to reduce vaporization of gasoline during tank filling.
13. The use of a non-coaxial coupling, as observed on October 20, 1999 at the Mobil facility, allows gasoline to be supplied to the tank via both the submerged gasoline fill pipe and the return vapor annulus, and is believed to have resulted in partial splash filling of the tank when a portion of the

gasoline was fed through the vapor annulus piping of the coaxial system. Such operation is in violation of Env-A 1205(f) and resulted in excessive gasoline vapor formation.

14. DES records indicate that on July 17, 1996, Aranco was issued a Letter of Deficiency for four violations of Stage II vapor recovery requirements at three separate stations owned and operated by Aranco.

IV. Violations Alleged

1. Aranco has violated Env-A 1205.14(b) by not having the vapor recovery hoses connected during the unloading of gasoline into tanks at the Sunoco facility, causing vapors to vent into the atmosphere.
2. Aranco has violated Env-A 1205.12(e) and Env-A 1205.05(f) by not using a separate coaxial coupling with a stage I vapor recovery hose for each tank being filled with gasoline at the Mobil facility.

V. Proposed Administrative Fines

1. For the violation identified in IV.1. above, RSA 125-C:15 specifies a fine range between \$1,251 and \$1,750. The Division seeks a fine of \$1,750 for this violation based upon facility throughput, environmental impact, compliance history of Aranco, and willfulness of the violation.
2. For the violation identified in IV.2. above, RSA 125-C:15 specifies a fine range between \$601 and \$1,250. The Division seeks a fine of \$1,050 for this violation based upon facility throughput, environmental impact, compliance history of Aranco, and willfulness of the violation.

The total fine being sought is \$2,800.

VI. Hearing, Required Response

Aranco has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 19, 2000 at 1:00 p.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, Aranco is required to respond to this notice. Please respond no later than May 25, 2000, using the enclosed form as follows:

1. If Aranco plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If Aranco chooses to waive the hearing and pay the proposed fine, please have an authorized

representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

- 3 If Aranco wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Aranco's interest in settling.

Aranco is not required to be represented by an attorney. If Aranco chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Aranco wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, Aranco must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Aranco does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 202.08.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Aranco committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Aranco committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

- ★ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Aranco proves, by a preponderance of the evidence**, applies in this case:

- 1 The violation was a one-time or non-continuing violation, **and** Aranco did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Aranco did not benefit financially, whether directly or indirectly, from the violation.
- 2 At the time the violation was committed, Aranco was making a good faith effort to comply with the requirement that was violated.
- 3 Aranco has no history of non-compliance with the statutes or rules implemented by DES or

with any permit issued by DES or contract entered into with DES

4. Other information exists which is favorable to Aranco's case which was not known to the Division at the time the fine was proposed.

★★★★★ IMPORTANT NOTICE ★★★★★

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Aranco's opportunity to present testimony and evidence that Aranco did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Aranco has any evidence, such as photographs, business records or other documents, that Aranco believes show that Aranco did not commit the violation(s) or that otherwise support Aranco's position, Aranco should bring the evidence to the hearing. Aranco may also bring witnesses (other people) to the hearing to testify on Aranco's behalf.

If Aranco wishes to have an informal meeting to discuss the issues, Aranco must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

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Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us.des). If Aranco has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY
Kenneth A. Colburn
Kenneth A. Colburn, Director
Air Resources Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
City Council - City of Concord